
HOUSE BILL No. 1081

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Various utility matters. Requires the utility regulatory commission (IURC) to consider in the rate base of a public utility that complies with certain renewable energy standards (RES) one-half of any capital expenditures made by the public utility to extend gas or electric service to a customer that produces biofuels. Requires the IURC to provide certain financial incentives for implementing electric line facilities projects to electricity suppliers that comply with a certain RES. Requires electricity suppliers to comply with an RES by specified dates. Provides that an electricity supplier that does not comply with a higher RES is not eligible for certain financial incentives related to renewable energy development. Requires the IURC to encourage the use of American made products in certain utility programs.

Effective: Upon passage; July 1, 2010.

Grubb, Koch

January 5, 2010, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

HOUSE BILL No. 1081

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-23.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 23.1. (a) As used in this section, "biofuels project"**
4 **means an addition to or the construction, extension, or**
5 **improvement of a public utility's plant or equipment to provide**
6 **electric or gas service to a customer that produces biodiesel,**
7 **ethanol, or any other biofuel.**

8 **(b) This section applies to a public utility that complies with the**
9 **schedule set forth in IC 8-1-37-6(b) and enters into an agreement**
10 **described in subsection (e).**

11 **(c) For purposes of section 23 of this chapter, a biofuels project**
12 **is in fact used and useful in the public service.**

13 **(d) This subsection applies to a public utility's general rate**
14 **proceeding that immediately follows the public utility's investment**
15 **in a biofuels project. A public utility may accrue for recovery in the**
16 **rate proceeding depreciation and a return, not to exceed a total of**
17 **ten million dollars (\$10,000,000), on the public utility's investment,**



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as allocated to the public utility under an agreement described in subsection (e), at the rate of return authorized by the commission in the public utility's general rate proceeding immediately preceding the investment. The accrual of a return by a public utility under this subsection:

(1) begins on the date the public utility initially records the investment in the public utility's books or records, as determined by the commission; and

(2) ends on the earlier of the following dates:

(A) The date on which the public utility accrues the full return determined under this subsection.

(B) The date rates are placed in effect after a general rate proceeding that recognizes an investment by a public utility in the public utility's rate base.

(e) To be eligible for a cost recovery under this section, a public utility shall enter into an agreement with the customer that is the beneficiary of electric or gas service provided under a biofuels project. The agreement must allocate the cost of the biofuels project as follows:

(1) Fifty percent (50%) to the public utility.

(2) Fifty percent (50%) to the customer.

(f) Notwithstanding subsection (d), the commission shall revoke a cost recovery approved under this chapter for an electricity supplier that the commission determines has:

(1) elected to; and

(2) failed to;

comply with the schedule set forth in IC 8-1-37-6(b).

(g) This section expires December 31, 2020.

SECTION 2. IC 8-1-8.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.2. Electric Line Facilities Projects

Sec. 1. As used in this chapter, "electric line facilities" means the following:

(1) Overhead or underground electric transmission lines.

(2) Overhead or underground electric distribution lines.

(3) Electric substations.

Sec. 2. As used in this chapter, "electric line facilities project" means an addition to or the construction, operation, maintenance, reconstruction, relocation, upgrading, or removal of electric line facilities. The term includes an electric line facilities project that provides electric service to a customer that generates electricity

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from renewable energy resources.

Sec. 3. As used in this chapter, "electricity supplier" means a public utility that furnishes retail electric service to the public.

Sec. 4. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1.

Sec. 5. As used in this chapter, "regional transmission organization" refers to the regional transmission organization approved by the Federal Energy Regulatory Commission for the control area in which an electricity supplier operates electric line facilities.

Sec. 6. As used in this chapter, "renewable energy resources" has the meaning set forth in IC 8-1-37-5.

Sec. 7. This chapter applies to an electricity supplier that complies with the schedule set forth in IC 8-1-37-6(b).

Sec. 8. (a) The commission shall encourage electric line facilities projects by creating the following financial incentives for electric line facilities that are reasonable and necessary:

(1) The timely recovery of reasonable and necessary costs, by means of a periodic rate adjustment mechanism, incurred by an electricity supplier that are allocated to Indiana retail customers in proportion to the retail electric service directly provided to Indiana retail customers in connection with an electric line facilities project that transmits or distributes electricity generated by a customer from renewable energy resources.

(2) The timely recovery of reasonable and necessary costs, by means of a periodic rate adjustment mechanism, incurred by an electricity supplier taking service under a tariff of or being assessed costs by the:

(A) regional transmission organization; or

(B) Federal Energy Regulatory Commission.

The commission may require an electricity supplier that seeks to receive a financial incentive described in subdivision (1) to enter into an agreement with the customer that is the beneficiary of electric service provided by the electric line facilities project. The agreement must allocate the cost of the electric line facilities project equally between the electricity supplier and the customer.

(b) The commission shall determine a reasonable schedule under which an electricity supplier may recover costs under this section. In making a determination under this subsection, the commission shall consider the impact of the cost recovery on ratepayers of the electricity supplier.

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1 **Sec. 9. (a) Subject to subsection (g), an electricity supplier must**
 2 **submit an application to the commission for approval of an electric**
 3 **line facilities project for which the electricity supplier seeks to**
 4 **receive a financial incentive created under section 8 of this chapter.**

5 **(b) The commission shall prescribe the form for an application**
 6 **submitted under this section.**

7 **(c) Upon receipt of an application under subsection (a), the**
 8 **commission shall review the application for completeness. The**
 9 **commission may request additional information from an applicant**
 10 **as needed. The commission may not review an application**
 11 **submitted after December 31, 2020.**

12 **(d) The commission, after notice and hearing, shall issue a**
 13 **determination of an electric line facilities project's eligibility for**
 14 **the financial incentives described in section 8 of this chapter not**
 15 **later than one hundred eighty (180) days after the date of the**
 16 **application. A determination under this subsection must include a**
 17 **finding that the applicant electricity supplier is in compliance with**
 18 **the schedule set forth in IC 8-1-37-6(b).**

19 **(e) Subject to subsection (g), the commission shall approve an**
 20 **application by an electricity supplier for an electric line facilities**
 21 **project that is reasonable and necessary. An electric line facilities**
 22 **project is presumed to be reasonable and necessary if the electric**
 23 **line facilities project:**

24 **(1) is consistent with, or part of, a plan developed by the:**

25 **(A) regional transmission organization; or**

26 **(B) Federal Energy Regulatory Commission; or**

27 **(2) transmits or distributes electricity generated from**
 28 **renewable energy resources.**

29 **However, an electricity supplier may seek approval from the**
 30 **commission at the electricity supplier's next general rate**
 31 **proceeding to include in the electricity supplier's basic rates the**
 32 **recoverable costs sought in an application approved under this**
 33 **subsection.**

34 **(f) This section does not relieve an electricity supplier of the**
 35 **duty to obtain any certificate required under IC 8-1-8.5 or**
 36 **IC 8-1-8.7.**

37 **(g) The commission may not approve a financial incentive under**
 38 **section 8 of this chapter for a particular electricity supplier if the**
 39 **commission has approved a financial incentive under section 8 of**
 40 **this chapter in the preceding twelve (12) months for that electricity**
 41 **supplier, unless the commission determines that approving a**
 42 **particular financial incentive for an electricity supplier on a more**

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timely basis will benefit the electricity supplier's ratepayers.

(h) A financial incentive that the commission approves before January 1, 2021, or that an electricity supplier applies for before January 1, 2021, and that is subsequently approved, expires on the earlier of the following dates:

(1) The date on which the electricity supplier accrues the full recovery amount authorized by the commission.

(2) The date specified by the commission in its approval of the financial incentive.

Sec. 10. The commission shall revoke all financial incentives approved under this chapter for an electricity supplier that the commission determines has:

(1) elected to; and

(2) failed to;

comply with the schedule set forth in IC 8-1-37-6(b).

SECTION 3. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 37. Renewable Energy Development

Sec. 1. (a) As used in this chapter, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to the public.

(b) The term does not include a utility that is a:

(1) municipally owned utility (as defined in IC 8-1-2-1(h));

(2) corporation organized under IC 8-1-13; or

(3) corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 2. (a) As used in this chapter, "energy efficiency measures" means:

(1) the installation and use of a device; or

(2) the use of a method or project implemented by an electricity consumer;

that reduces electrical energy usage.

(b) The term includes the following:

(1) Home weatherization.

(2) Appliance efficiency modifications or replacements.

(3) Motor efficiency modifications or replacements.

(4) Lighting efficiency modifications.

(5) Heating or air conditioning modifications or replacements.

(6) Building designs with the purpose of achieving end use energy reductions.

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(7) Improvements that:

(A) increase the efficiency of transmission and distribution systems used to transmit electricity from the source to the end user; and

(B) reduce the loss of electricity during transmission.

Sec. 3. As used in this chapter, "regional transmission organization" has the meaning set forth in IC 8-1-8.2-5.

Sec. 4. (a) As used in this chapter, "renewable energy credit", or "REC", means a tradable compliance instrument that is:

(1) associated with one (1) megawatt hour of electricity generated from a renewable energy resource described in section 5(a) of this chapter; and

(2) tracked in an electronic tracking system approved by the commission.

(b) The term does not include an instrument or the associated electricity that is:

(1) retired; or

(2) otherwise claimed for purposes of complying with any voluntary contract or renewable energy requirement in another jurisdiction.

Sec. 5. (a) As used in this chapter, "renewable energy resources" includes the following sources or processes:

(1) Methane systems that convert waste products, including animal, food, and plant waste, into electricity.

(2) Methane recovered from landfills.

(3) Wind, including wind energy battery storage systems.

(4) Solar photovoltaic cells and panels.

(5) Clean coal technology.

(6) Dedicated crops grown for energy production. An invasive species of plant (as defined by Indiana law) does not qualify as a crop under this subdivision.

(7) Energy from waste to energy facilities.

(8) An electric generating facility that uses any of the sources or processes described in subdivisions (1) through (7).

(9) Hydropower that is:

(A) initially derived after June 30, 2010; and

(B) from dams in existence on July 1, 2010.

(10) Energy efficiency measures that are installed after June 30, 2010.

(11) Geothermal hot water district heating systems.

(b) Except as provided in subsection (a)(7), the term does not include energy from the incineration, burning, or heating of the

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following:

- (1) Garbage.
- (2) General household, institutional, or commercial waste.
- (3) Industrial lunchroom or office waste.
- (4) Landscape waste.
- (5) Construction or demolition debris.
- (6) Feedstock that is municipal, food, plant, industrial, or animal waste from outside Indiana.

Sec. 6. (a) Each electricity supplier shall supply electricity under a schedule set forth in either subsection (b) or (c).

(b) In order to qualify for a financial incentive under IC 8-1-2-23.1, IC 8-1-8.2-8, or section 10 of this chapter, an electricity supplier shall supply electricity that is generated from renewable energy resources described in section 5(a) of this chapter to Indiana customers as a percentage of the total electricity supplied by the electricity supplier to Indiana customers during a calendar year as follows:

- (1) Not later than the calendar year ending December 31, 2011, at least four percent (4%).
- (2) Not later than the calendar year ending December 31, 2013, at least seven percent (7%).
- (3) Not later than the calendar year ending December 31, 2016, at least ten percent (10%).
- (4) Not later than the calendar year ending December 31, 2021, at least fifteen percent (15%).
- (5) Not later than the calendar year ending December 31, 2026, at least twenty percent (20%).

For purposes of this subsection, electricity is measured in megawatt hours.

(c) An electricity supplier that elects not to comply with subsection (b) shall supply electricity that is generated from renewable energy resources described in section 5(a) of this chapter to Indiana customers as a percentage of the total electricity supplied by the electricity supplier to Indiana customers during a calendar year as follows:

- (1) Not later than the calendar year ending December 31, 2011, at least three percent (3%).
- (2) Not later than the calendar year ending December 31, 2016, at least six percent (6%).
- (3) Not later than the calendar year ending December 31, 2021, at least ten percent (10%).
- (4) Not later than the calendar year ending December 31,

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2026, at least fifteen percent (15%).

For purposes of this subsection, electricity is measured in megawatt hours.

(d) An electricity supplier complies with subsection (b) or (c) by demonstrating to the commission that an equivalent volume of RECs has been retired in an eligible electronic tracking system.

(e) An electricity supplier may use a renewable energy resource described in:

(1) section 5(a)(5) of this chapter to generate not more than twenty-five percent (25%);

(2) section 5(a)(10) of this chapter to generate not more than ten percent (10%); and

(3) section 5(a)(11) of this chapter to generate not more than ten percent (10%);

of the electricity that the electricity supplier is required to supply under subsection (b) or (c), as applicable.

(f) If an electricity supplier exceeds the applicable percentage under subsection (b) or (c) in a compliance year, the electricity supplier may carry forward the amount of electricity that:

(1) exceeds the applicable percentage under subsection (b) or (c); and

(2) is generated from renewable energy resources in an Indiana facility;

to comply with the requirement under subsection (b) or (c) for either or both of the two (2) immediately succeeding compliance years.

Sec. 7. (a) An electricity supplier that elects to, and fails to, comply with the schedule set forth in section 6(b) of this chapter is no longer eligible for financial incentives as provided in IC 8-1-2-23.1(d), IC 8-1-8.2-10, or section 10(c) of this chapter, as applicable.

(b) An electricity supplier described in subsection (a) shall comply with the schedule set forth in section 6(c) of this chapter beginning in the compliance year in which the electricity supplier fails to comply with the schedule set forth in section 6(b) of this chapter.

Sec. 8. (a) This section applies to an electricity supplier that is required to, and fails to, comply with the schedule set forth in section 6(c) of this chapter.

(b) Beginning January 1, 2012, and annually thereafter, the commission shall determine whether an electricity supplier is in compliance with the schedule set forth in section 6(c) of this

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chapter. The commission shall make a determination under this subsection not later than March 1 of each year.

(c) If the commission determines that an electricity supplier is not in compliance with the schedule, the commission shall impose a reasonable monetary penalty in an amount equal to the product of:

(1) the number of megawatt hours of electricity that the electricity supplier was required to, but failed to, supply under section 6(c) of this chapter; multiplied by

(2) twenty-five dollars (\$25).

In determining the amount of the monetary penalty, the commission shall consider the efforts made by the electricity supplier in attempting to comply with the schedule.

(d) If the commission determines not later than December 31 of a year that an electricity supplier against whom a monetary penalty was imposed under subsection (c) has achieved compliance with the schedule, the commission may refund all or part of the monetary penalty imposed on the electricity supplier for that calendar year.

Sec. 9. (a) An electricity supplier is not required to timely comply with section 6(b) or 6(c) of this chapter, as applicable, if the commission determines that the electricity supplier has demonstrated that the cost of compliance with section 6(b) or 6(c) of this chapter, as applicable, using the renewable energy resources available to the electricity supplier would result in an unreasonable increase in the basic rates and charges for electricity supplied to customers of the electricity supplier. The commission shall conduct a public hearing to make a determination under this section.

(b) If the commission determines under a hearing conducted under subsection (a) that the cost of compliance with section 6(b) or 6(c) of this chapter, as applicable, would result in an unreasonable rate increase, the commission shall extend the applicable deadline imposed under section 6(b) or 6(c) of this chapter. If the commission extends a deadline under this subsection, the commission shall consider whether subsequent deadlines imposed under section 6(b) or 6(c) of this chapter, as applicable, also should be extended.

Sec. 10. (a) The commission shall allow an electricity supplier that complies with the schedule set forth in section 6(b) or 6(c) of this chapter to recover reasonable and necessary costs incurred in:

(1) constructing, operating, or maintaining facilities to comply with this chapter;

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- (2) generating electricity from, or purchasing electricity generated from, a renewable energy resource;
- (3) purchasing RECs, but not the associated power, produced from a renewable energy resource; or
- (4) complying with federal renewable energy resource portfolio requirements;

by a periodic rate adjustment mechanism.

(b) Except as provided in subsection (c), the recovery of costs by a periodic rate adjustment mechanism under subsection (a) expires on the earlier of the following dates:

- (1) The date on which the electricity supplier recovers under the periodic rate adjustment mechanism all costs allowed under subsection (a).
- (2) December 31, 2017.

(c) The commission shall revoke a periodic rate adjustment mechanism allowed under subsection (a) for an electricity supplier that the commission determines:

- (1) is required to; and
- (2) has failed to;

comply with section 6(b) or 6(c) of this chapter.

Sec. 11. (a) For purposes of calculating RECs to determine an electricity supplier's compliance with section 6(b) or 6(c) of this chapter, as applicable, the following apply:

- (1) Except as provided in subdivision (2), one (1) megawatt hour of electricity generated from renewable energy resources in an Indiana facility equals one (1) REC.
- (2) One (1) megawatt hour of electricity generated from a renewable energy resource described in section 5(a)(1) of this chapter that originates in Indiana equals two (2) RECs.
- (3) One (1) megawatt hour of electricity that is:
 - (A) generated from a renewable energy resource that is directly interconnected to a regional transmission organization whose members include an electricity supplier; and
 - (B) imported into Indiana; equals five-tenths (0.5) REC.

(b) Electricity generated by any source outside the territory of a regional transmission organization may not be considered for purposes of calculating an REC to determine an electricity supplier's compliance with section 6(b) or 6(c) of this chapter, as applicable.

(c) An electricity supplier may not apportion all or part of a

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single megawatt of electricity among more than one (1):

(1) renewable energy resource; or

(2) category set forth in subsection (a);

in order to comply with section 6(b) or 6(c) of this chapter, as applicable.

Sec. 12. The Indiana economic development corporation, in consultation with the commission, shall develop a strategy to attract renewable energy component manufacturing and assembly facilities to Indiana.

Sec. 13. Beginning in 2017, not later than March 1 of each year, an electricity supplier shall file with the commission a report of the electricity supplier's compliance with this chapter for the preceding calendar year.

Sec. 14. The commission shall adopt rules under IC 4-22-2 to implement this chapter. A rule adopted under this section may establish a procedure by which an electricity supplier that initially elects to comply with the schedule set forth in section 6(c) of this chapter may later comply with the schedule set forth in section 6(b) of this chapter.

SECTION 4. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 38. Use of American Made Products

Sec. 1. As used in this chapter, "public utility" refers to the following:

(1) For purposes of IC 8-1-2-23.1, a public utility (as defined in IC 8-1-2-1).

(2) For purposes of IC 8-1-8.2, an electricity supplier (as defined in IC 8-1-8.2-3).

(3) For purposes of IC 8-1-37, an electricity supplier (as defined in IC 8-1-37-1).

Sec. 2. As used in this chapter, "utility program" refers to the following:

(1) A biofuels project (as defined in IC 8-1-2-23.1).

(2) An electric line facilities project (as defined in IC 8-1-8.2-2).

(3) The acquisition, construction, completion, extension, or improvement of a facility, building, or other structure to comply with a schedule established under IC 8-1-37-6.

Sec. 3. The general assembly directs the commission to encourage the use of American made products by a public utility when implementing a utility program.

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1 **Sec. 4. The commission shall consider the factors described in**
 2 **IC 5-22-15-21(c) as mitigating factors to relieve a public utility**
 3 **from the use of American made products.**
 4 **SECTION 5. An emergency is declared for this act.**

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